

APR 28 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

REX CHAPPELL,

Plaintiff - Appellant,

v.

SAM BESS; MICHAEL QUIST and
CHERYL PLILER,

Defendants - Appellees.

No. 06-15805

D.C. No. CV-01-01979-FCD/KJM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, District Judge, Presiding

Argued and Submitted March 14, 2008
San Francisco, California

Before: RYMER, RAWLINSON, and CALLAHAN, Circuit Judges.

Appellant Rex Chappell (Chappell) appeals the district court's grant of summary judgment based on qualified immunity on Chappell's due process claim, the district court's dismissal of Chappell's equal protection claim without

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

comment, and the district court's refusal to construe Chappell's state law allegations as a claim for malicious prosecution.

Pursuant to the agreement of the parties at oral argument, Chappell's due process claim and state law allegations stating a claim for malicious prosecution are remanded to the district court for consideration on the merits.

We decline to address Chappell's equal protection claim on appeal, so as to allow the district court the opportunity to address it in the first instance on remand.

REVERSED AND REMANDED.